

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

VIVIAN NICHOLS, PHYLISS NICHOLS,  
CLEOTHA NICHOLS, PHYLISS NICHOLS  
AS MOTHER AND NEXT FRIEND OF  
ANTHONY LUCKETT, A MINOR,  
EARL BROOKINGS AS FATHER AND NEXT  
FRIEND OF ANTHONY DEWAYE DAVIS,  
A MINOR, AND CASSANDRA ADAGBONYIN

PLAINTIFFS

V.

CIVIL ACTION NO. 3:06cv364HTW-JCS

THE CITY OF JACKSON, MISSISSIPPI,  
CITY OF JACKSON POLICE OFFICERS  
SLADE MOORE, LONDON L. SMITH,  
BRAD DAVIS, AND LONNIE ARINDER

DEFENDANTS

**PLAINTIFFS' RESPONSE IN OPPOSITION  
TO DEFENDANTS' MOTION TO DISMISS FOR IMMUNITY  
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

The defendants' motion should be denied for the following reasons:

1. The dispositive motion deadline was June 4, 2007. However, the defendants' motion to dismiss or for summary judgment was not filed until August 15, 2007. Thus, the motion should be denied as untimely.

2. On July 27, 2007, the defendants filed a motion for leave to file their dispositive motion out of time. We opposed that request and the Court has yet to rule on it. For the reasons stated in our opposition, that request should be denied and leave should not be granted.

3. Because the Court has not, as of this point, granted leave for an out-of-time filing, plaintiffs' counsel will not spend the time or incur the expense of responding to the

substance of the motion. If the Court does grant leave, plaintiffs' counsel assume they will have the usual time period to file a substantive response to the motion.

4. In their motion, the defendants have requested a stay of proceedings under Local Rule 16.1(B)(4)(b) because they claim they have filed an immunity defense motion. But a stay is not appropriate because the defendants have not complied with the prerequisites for filing an immunity defense motion. First, Local Rule 16.1(B)(4)(a) requires that the motion be raised "as expeditiously as possible after the filing of the complaint." Obviously, that was not done here. Second, the defendants have not complied with the deadline for filing dispositive motions such as motions to dismiss or motions for summary judgment based on immunity grounds. Moreover, even if a stay were appropriate, Local Rule 16.1(B)(4)(b) calls for a stay of the attorney conference and disclosure requirements and all discovery except that related to the immunity issue. Those things have already happened. There is no basis for a stay.

For the foregoing reasons, the motion to dismiss or for summary judgment should be denied.

Respectfully Submitted,

s/ Robert B. McDuff  
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ATTORNEYS FOR THE PLAINTIFFS

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2007, I electronically filed the *Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss for Immunity or in the Alternative for Summary Judgment* with the Clerk of the Court using the ECF system which sent notification to the following:

Sarah O'Reilly-Evans  
Pieter Teeuwissen  
Claire Barker  
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455 East Capitol Street  
Jackson, MS 39202

s/Robert B. McDuff